



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/065,326

10/03/2002

Steven Curtis Zicker

7017-00-HL

9314

23909 7590 11/28/2011
COLGATE-PALMOLIVE COMPANY
909 RIVER ROAD
PISCATAWAY, NJ 08855

EXAMINER

KIM, JENNIFER M

ART UNIT

PAPER NUMBER

1628

NOTIFICATION DATE

DELIVERY MODE

11/28/2011

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

Chempatent@colpal.com

Office Action Summary	Application No. 10/065,326	Applicant(s) ZICKER ET AL.	
	Examiner JENNIFER M. KIM	Art Unit 1628	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 September 2011.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 3-7, 9 and 11 is/are pending in the application.
- 4a) Of the above claim(s) 8 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3-7,9 and 11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

The amendment filed September 28, 2011 have been received and entered into the application.

Response to Arguments

Applicants' arguments filed September 28, 2011 have been fully considered but they are not persuasive. Applicants argue that the Examiner has not established *prima facie* obviousness rejection because the Examiner has not identified any portion of the cited references that discloses or suggests the intent of practice the claimed method for the purpose. This is not found persuasive because the claimed subject matter was earlier taught and claimed by Ishihara et al in their claims. Applicants attention is drawn to Ishihara et al who claimed a composition for suppressing behavior problems of pets comprising one or more compounds of DHA and EPA, cholines and arachidonic acid with their effective dosage amounts claimed in their claims (see claims 1-5). Based on the general therapeutic dosages of DHA and EPA taught by Ishihara et al, no unobviousness is seen in the percentages of amounts claimed because once the usefulness of a compound is known to treat a condition, it is within the skill of the artisan to determine the optimum amount. Applicants argue that the instant claims involve administration of **a diet** comprising an omega-3 fatty acid. This is not persuasive because it is obviated by Ishihara et al who illustrate the administration of omega-3 fatty acids to a pet in a commercially available pet food. Applicants argue that the examples

Art Unit: 1628

of Ishihara et al teach less than half a gram and for most of the examples, it is absent or much lower. This is not persuasive because the fact that the treatment of suppressing behavior problems of pets comprising administration of DHA and EPA and the amounts are clearly taught by claimed by Ishihara et al (see claims). Thus, the claims fail to patentably distinguish over the state of the art as represented by the cited references.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1, 3-7, 9 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ishihara et al (U.S. Patent No. 6,279,280 B1) of in view of Reisbick et al of record.

Ishihara et al claimed a composition for suppressing behavior problems of pets, comprising one or more compounds including eicosapentaenoic acid (EPA) and docosahexaenoic acid (DHA) (see claims 1 and 2). Ishihara et al claimed the dosages of EPA and DHA per administration is 0.2 to 80mg per one kilogram of the body weight of the pet (see claim 4). Ishihara et al claimed that the pet to be treated can be **dogs or cats** (see claim 5). Ishihara et al teach that the dogs and cats are preferable for the use of the composition (column 3 lines 43-47). Ishihara et al claimed the behavior problem to be treated including attack, destruction, inappropriate elimination, licking its paw repeatedly, scratching, cryptogenic astasia, shivering, astasia, pray, scratching

Art Unit: 1628

cryptogenic astasia, shivering, abnormal appestat associated with dynamia, aberrant motor behavior, dysbasia, abnormal sense, abnormal posture, abnormal vocalizing, loss of feeling, loss of interrrelation and abnormal situation judgment (see claim 6). Ishihara et al additionally disclose the behavior problems on column 3 line 50-column 4 line 14. Ishihara et al teach that the composition can be administered orally as a pet food (column 4 lines 29-40). It is noted that there is no indication that the cats and dogs disclosed by Ishihara et al are suffering from cancer or arthritis.

Ishihara et al do not expressly teach the percentage of DHA and/EPA set forth in claims 1 and 9 and the age of pets set forth in claims 3, 4 and 7.

Reisbick et al. teach that dietary deficiency and supplementation of omega-3 fatty acids have been associated with several effects on behavior. (page 419, summary). Reisbick et al. teach that a decrease in dopamine and/or dopamine receptors in the prefrontal cortex of deficient animals increase their responsivity to environmental stimuli. Reisbick et al. teach that DHA levels will correlate simultaneously with both levels of dopamine and Dopamine2 receptors and certain behaviors. (page 419).

It would have been obvious to one of ordinary skill in the art to optimize the dosage of DHA and EPA in Ishihara's composition for the moderating the behavior of a dog or cats because DHA and EPA are known to be useful for suppressing behavior problems of pets as claimed by Ishihara and because Reisbick et al teach that omega-3 fatty acids effects behavior of animal particular DHA content. One would have been motivated to optimize the dosage of DHA and EPA in Ishihara's composition in order to achieve an expected therapeutic benefit in influencing behavior in animal as claimed by

Art Unit: 1628

Ishihara and the known knowledge at the time the invention was made that omega 3-fatty acids influencing animal's behavior. Further, one of ordinary skill in the art would be motivated to employ the composition taught by Ishihara regardless of the age of dogs or cats as long as there is a behavior modification is needed without surprising and unexpected results in the age group.

For these reasons the claimed subject matter is deemed to fail to patentably distinguish over the state of the art as represented by the cited references. The claims are therefore properly rejected under 35 U.S.C. 103.

None of the claims are allowed.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

Art Unit: 1628

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Communication

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JENNIFER M. KIM whose telephone number is (571)272-0628. The examiner can normally be reached on Monday through Friday 6:30 am to 3 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brandon Fetterolf can be reached on 571-272-2919. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Application/Control Number: 10/065,326

Page 7

Art Unit: 1628

/JENNIFER M KIM/
Primary Examiner, Art Unit 1628

Jmk
November 21, 2011